

Joint Administrative Rules Review Committee

2nd Floor, John L O'Brien Building
Representative Hasegawa, Chair
PO Box 40600
Olympia, WA 98504-0600

October 14, 2009

The Honorable Peter DeVries, Council Chair
Mr. Jon Napier, Council Vice-Chair
Washington State Building Code Council
128 10th Avenue Southwest
Post Office Box 42525
Olympia, Washington 98504-2525

Dear Chair DeVries and Vice-Chair Napier:

The Joint Administrative Rules Review Committee (Committee) is authorized by Chapter 34.05 RCW to selectively review agency rules and policies, including whether proposed or existing administrative rules are adopted in accordance with all procedural requirements of law. On October 1, 2009, the Committee held a hearing to consider the sufficiency of existing economic impact analysis regarding the 2009 proposed State Energy Code (Code) updates (proposed WAC 51-11-0101 through 51-11-99904). The purpose of this letter is to advise you of the outcome of that hearing.

As a preliminary matter, we would like to express our sincere appreciation for the presentation made to the Committee by Mr. Tim Nogler and Mrs. Kristyn Clayton. The Committee reviewed the Small Business Economic Impact Statement (SBEIS) prepared by the Council for the proposed updates as well as the statutory requirements.

While the Committee is mindful that the Council has not completed its rulemaking process, by unanimous vote (5-0-2), the Committee took the following actions:

1. The Committee found that, at this time, the Council's SBEIS for the Code updates have not been done in accordance with all applicable provisions of law. The Council is requested to amend the SBEIS to comply with all requirements of the Regulatory Fairness Act, Chapter 19.85 RCW, and support it with a detailed and rigorous cost analysis of the cumulative impact of all the changes. The amended SBEIS should include a reasonable estimate of how many jobs will be lost or created as a result of the proposed rules, as required by RCW 19.85.040(2)(d).

The Committee discussed during the meeting that the Council should solicit industry

and supplier sources for cost estimates based on current market rates for the proposed changes and conduct a cost analysis of implementing each proposed change.

It is requested that the Council complete this analysis prior to adoption of the proposed rules, and file the amended SBEIS with the Office of the Code Reviser and provide a copy to the Committee.

2. The Committee exercised its authority pursuant to RCW 34.05.328(5)(a)(ii) to make the cost-benefit analysis requirements of RCW 34.05.328 applicable to the 2009 proposed updates to the Code. The cost-benefit analysis should meet applicable industry standards and be supported by documentation of sufficient quantity and quality so as to persuade a reasonable person that the determinations are justified, as required by RCW 34.05.328(2).

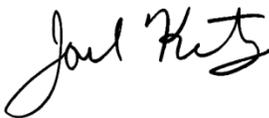
The Council is requested to provide the Committee with a copy of the cost-benefit analysis before the proposed rules are adopted.

If you have any questions or concerns, please contact Committee staff, Kathryn Leathers, at (360) 786-7114 or leathers.kathryn@leg.wa.gov, or Diane Smith, at (360) 786-7410 or smith.diane@leg.wa.gov.

Sincerely,



Representative Bob Hasegawa, Chair
Joint Administrative Rules Review Committee



Representative Joel Kretz, Vice-Chair
Joint Administrative Rules Review Committee

cc: Tim Nogler, SBCC Managing Director
Kristyn Clayton, SBCC Energy Code TAG Chair

Sandra Adix, SBCC Counsel
Representative Ormsby
Representative Dammeier
Senator Tom
Senator Holmquist
Representative Kelley
Representative Kristiansen
Senator McCaslin
Senator Kastama
Senator Fraser
Representative Crouse
Representative Hudgins
Senator Keiser
Senator Kilmer
Representative McCoy
Senator Rockefeller
Representative Rolfes